

EXHIBIT 15

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPLE, INC., et al.,

Defendants.

Civil Action No. 12-cv-2826 (DLC)

THE STATE OF TEXAS;

THE STATE OF CONNECTICUT; et al.,

Plaintiffs,

v.

PENGUIN GROUP (USA) INC. et al.,

Defendants.

Civil Action No. 12-cv-03394 (DLC)

DIRECT TESTIMONY OF RUSSELL C. GRANDINETTI (AMAZON.COM)

books were digitized, and we arrived at a pricing approach that in many ways mirrored the success that we had in print books.

24. As a company, even beyond books, our goal is always to pass on as much of the efficiency and innovation that we can deliver to customers by lowering prices, because by lowering prices over time we think that we can attract customers and also have a great business. We are always seeking a really good balance between great customer value and a healthy long-term business [REDACTED]
[REDACTED]

25. I participated in the decision to establish Amazon's price for the Kindle version of most current *New York Times* best sellers and some other new releases at \$9.99. In many cases early on, \$9.99 was a breakeven price. For example, on a hard cover new release with a list price of \$25, the digital list price was 20% less, or \$20. Trade terms are usually in the range of a 50% purchase discount, which meant the cost to us was \$10. This is what I mean when I say that selling at \$9.99 was often a roughly breakeven price. In any event, having some titles as loss leaders is quite common in both book-selling and retailing generally. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] And of course prices on many ebooks that we sold varied widely. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. We also have never used sales of ebooks directly to subsidize the Kindle device. We don't think of it simplistically as one part of the business subsidizing another part of the business. Rather, our goal has been to have both parts of the business sustainable in their own right. But we're also not blind to the fact that they're related businesses and so there have been various times where we looked at the business holistically as the sum of what the device business and the content business provide together. We have thought about some trade-offs with that

concept, but never solely in that context and never absent that context. And it's important to keep in mind that there may be people who buy our Kindle Fire device who don't really read much, so the ebook business may not apply to those customers at all. Conversely, there are many people who don't own any Kindle hardware but who buy Kindle books from us. And both of those cases are big business opportunities so we can't just look at it as one subsidizing the other.

Complaints About Kindle Ebook Prices

27. From the beginning, publishers complained about our pricing. They repeatedly complained about our \$9.99 pricing for *New York Times* bestsellers and other new releases, and at any number of turns, encouraged us to raise our prices. These complaints came from many publishers, including Hachette, HarperCollins, Penguin, Macmillan, and Simon & Schuster. We refused to raise prices in response to these complaints; we always set our prices unilaterally until the agency model was introduced.

28. We did this even when many of the large publishers raised their digital list prices significantly, in an apparent attempt to force us to raise our consumer prices. In some cases, certain publishers even set them higher than the corresponding physical list prices. [REDACTED]

[REDACTED] Also, building and maintaining customer trust is critical to Amazon's long term success, and we had made a commitment to customers from the earliest days of the Kindle that most bestsellers would be priced at \$9.99.

29. Some of the publishers argued with us that our pricing for ebooks wasn't sustainable, or that we must have a plan to gain control of the market and then raise prices. None of these claims were true, and we told them that repeatedly. There never has been any plan or assumption that at some point in the future consumer prices could or should be higher. We were completely convinced based upon our experience in print books and what we knew about our terms in digital that our pricing approach to Kindle books allowed us to run a very successful business without raising our prices.

30. While we didn't need to get lower list prices from publishers to sustain our pricing approach, we did suspect that list prices for digital would have some rational relationship with the print list prices over time; this is just logical. Some publishers had digital list prices the same as print and there were any number of publishers that had digital list prices that were a bit lower than print, which felt like the more logical place to us and if we had to bet, I think we would have bet that that's where things would go over time. Of course, we asked for better terms every year, as I suspect customers of suppliers always do. It's good for our business to negotiate better terms, and like any other bookseller we worked hard to achieve them. [REDACTED]

[REDACTED] Our pricing model did not require any kind of reduction in list prices from where they were when we started the Kindle business in order to succeed.

Windowing Ebooks

31. We have always strongly believed that offering ebooks for sale at the same time that the print book was published was the best approach, not just for consumers, but for publishers and authors, too. In the early days after the launch of the Kindle, publication of some ebooks was delayed because there was no digital version. In those early days, it took quite a bit of time and effort to digitize all the print books in the catalogue and many new books were being released before they were available in digital form. As systems were put in place to manage the digitization process, however, and as the ebook business grew it became the norm for publishers to release ebooks at the same time as the print version.

32. During the summer and fall of 2009, certain publishers began to experiment with "windowing," a practice in which the release of the digital version of a new book is delayed for some time after the print book is published. This happened with a few high profile bestsellers, such as Stephen King's *Under the Dome*, published by Simon & Schuster. We told the publishers that this was a very bad idea for them and their authors. Based on my years in the book business, I felt the publishers' decision made no economic sense, would alienate customers and result in lost sales. At the time, the publishers involved told us that their decision to window

[REDACTED]

54. The prices under agency were not only higher than they had been under the traditional wholesale model; they often were downright nonsensical. In many cases, the agency price set by the publisher for a digital book was several dollars more than for the print book. This included current bestsellers (AMZN-MDL-0142151) but older books were also affected. For example I recall that Penguin raised the digital price of *Atlas Shrugged* by Ayn Rand to something like \$19 or \$20 – the paperback sold for under \$10.

55. Prices also rarely changed after agency. Amazon, by contrast, has invested significantly in developing thoughtful and sophisticated algorithms about how to price and when to move prices up or down, which we do dynamically all the time on the site, not just for books. It was clear that the publishers had done nothing to develop systems for setting prices. I was surprised and disappointed by the lack of sophistication that they brought to the pricing question.

56. Agency also limited innovation and promotional options – we were unable to attempt even standard retail approaches like points systems or “buy one get one” offers – [REDACTED]. One particular example is the Kindle Owners’ Lending Library. We did eventually launch that program, which allows Amazon Prime members to borrow up to one book a month free of charge. But there weren’t any agency titles in the program, despite having made significant financial offers to the publishers to include their books, and, after launch, we showed them data about the benefits to them and their authors of participation, but they refused.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on April 24 2013.



Russell C. Grandinetti